

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF PUBLIC INTEREST

The Director of the Department of Consumer and Regulatory Affairs pursuant to D.C. Law 2-144, effective March 3, 1979-, "**The Historic Landmark and District Protection Act of 1978**" hereby gives notice that the addresses listed below, as requested permission to demolish, altar, sub-divide or erect new structures at the following location(s):

Application Date	Address	Lot	Sq.	Use
4/3/03	215 Pennsylvania Avenue, SE	809	762	2 Signs Bakery
	201 East Capitol Street, SE	31	760	Sign in Public Space
4/4/03	1302 9 th Street, NW	835	367	Concept
	310 9 th Street, NW	26	945	Add/SFD
4/7/03	3211 M Street, NW	801	1207	Exterior Light
4/8/03	1627 34 th Street, NW	839	1278	Deck SFD
	3008 1/2 R Street, NW	2001	1282	Fence SFD
	901 F Street, NW	72	376	S/W Café
	65 Massachusetts Avenue, NW	806	625	Interior Demo
	1353 & 1355 28 th Street, NW	157 & 158	1239	Fence SFD
	1613 35 th Street, NW	9	1277	Add/SFD
	3105 P Street, NW	801	1269	Door SFD
4/9/03	3001 P Street, NW	290	1269	Window Façade
	3124--28 M Street, NW	56	1199	Condo Awning

**DEPARTMENT OF CONSUMER AND REGULATORY
AFFAIRS****NOTICE OF PUBLIC INTEREST**

Forwarded for your information is a weekly listing of **raze permit application** filed with the Permit Service Center of the Building and Land Regulation Administration, requesting a permit to raze listed structures with the District of Columbia.

Application Date	Address	Lot	Sq.	Use
4/4/03	302 R Street, NW	800	520	2- Story SFD
	5927 Georgia Avenue, NW	37	2986	3-Story Comm. Bldg.
4/8/03	4101 Yuma Street, NW	806	1729	3- Story School

BOARD OF ELECTIONS AND ETHICS
CERTIFICATION OF ANC/SMD VACANCIES

The District of Columbia Board of Elections and Ethics hereby gives notice that there are vacancies in six (6) Advisory Neighborhood Commission offices, certified pursuant to D.C. Code §1-309.06(d)(2) [(2001 Ed.)].

VACANT: **1B11**

Petition Circulation Period: **Monday, April 14, 2003 thru Monday, May 5, 2003**
Petition Challenge Period: **Thursday, May 8, 2003 thru Wednesday, May 14, 2003**

VACANT: **6B05**

Petition Circulation Period: **Thursday, April 10, 2003 thru Wednesday, April 30, 2003**
Petition Challenge Period: **Monday, May 5, 2003 thru Friday, May 9, 2003**

VACANT: **4A05**
 8E01

Petition Circulation Period: **Tuesday, April 1, 2003 thru Monday, April 21, 2003**
Petition Challenge Period: **Thursday, April 24, 2003 thru Wednesday, April 30, 2003**

VACANT: **8D07, 8E03**

Petition Circulation Period: **Monday, March 31, 2003 thru Monday, April 21, 2003**
Petition Challenge Period: **Thursday, April 24, 2003 thru Wednesday, April 30, 2003**

Candidates seeking the Office of Advisory Neighborhood Commissioner, or their representatives, may pick up nominating petitions at the following location:

D.C. Board of Elections and Ethics
441 - 4th Street, NW, Room 250N

Our office hours are from 8:30 a.m. until 4:45 p.m. Monday through Friday. For more information, the public may call 727-2525.

D.C. PUBLIC CHARTER SCHOOL BOARD

NOTICE OF PUBLIC MEETING

The DC Public Charter School Board will hold its monthly meeting on Monday, April 21, 2003 at 7:30pm. The meeting will take place at the Board headquarters at 1436 U Street, NW, Suite 401.

Community members interested in public charter school education are encouraged to attend.

For more information contact Nona Richardson at 202/328-2670.

Office of the Secretary of the
District of Columbia

April 2, 2003

Notice is hereby given that the following named persons have been appointed as Notaries Public in and for the District of Columbia, effective on or after May 1, 2003.

Ambert, Linda R.	New	Optical Society of Amer 2010 Mass Ave,NW 20036
Barrett, Gloria J.	Rpt	Dept of Labor 200 Const Ave,NW#2521 20210
Bean, Saundra D.	New	H O R/C A O LHOB, B241 20515
Beasley, Marva R.	Rpt	Child & Family Services 400 6 th St,SW 20024
Bess, Angela M.	New	800 Southern Ave,SE#400 20032
Bowers, Judy A.	New	DOT/Maritime Adm/Ship Fin 400 7 th St,SW#8122 20590
Brooks, Loretha	New	Wilkie Farr & Gallagher 1875 K St,NW 20006
Brown, Michelle	New	Wash Hospital Center 110 Irving St,NW 20010
Bunn, James E.	Rpt	3127 MLK Ave,SE 20032
Carter, Vickie L.	Rpt	The Lewis Law Firm 805 15 th St,NW#200 20005
Clair, Jerome E.	New	1200 G St,NW#800 20005

Cross, Wanda P.	New	Projects International 1800 K St,NW#1000 20006
Davis, Patricia A.	New	1723 Taylor St,NW 20011
Davis, Rebecca A.	Rpt	P S I Family Services 770 M St,SE 20003
Ellinwood, Christina C.	Rpt	Hogan & Hartson 555 13 th St,NW 20004
Finch, Debra I.	Rpt	Adams National Bank 1130 Conn Ave,NW#200 20036
Flowers,III, James H.	New	Wash Hospital Ctr 110 Irving St,NW 20010
Flowers, Valerie	Rpt	Veterans' Hospital 50 Irving St,NW#GC206 20422
Fobe, Nicholas M.	Rpt	Verstegen & Fobe 1776 I St,NW9thFl 20006
Foster, Raseana	New	Grubb & Ellis Management 1341 G St,NW#77 20005
Gray, Denise J.	Rpt	Seyfarth Shaw 815 Conn Ave,NW#500 20006
Gumpert, Emily K.	Rpt	Fountainhead Title Group 2300 M St,NW#800 20037
Haddox, Anne R.	Rpt	S B C Telecommunications 1401 I St,NW#1100 20005
Hardy, Delores	Rpt	N C A R B 1801 K St,NW#1100K 20006
Harris, Jean B.	New	129 Longfellow St,NW 20011

Harrison, Krystine M.	Rpt	Archon Group/C.Dunston 919 18 th St,NW#500 20006
Hart, Denise	Rpt	Consolidated Family Serv 1802 5 th St,NW 20001
Heath, Mary J.	New	Federal News Service 1919 M St,NW#220 20036
Henderson, Raakeebah L.	New	Carol Thomas Reporting 1077 30 th St,NW#212 20007
Hester, Maria	New	Heritage Reporting 1220 L St,NW#600 20005
Hill, Deidre Veronica	Rpt	301 G St,SW 20024
Hill, Willette A.	Rpt	Miller & Van Eaton 1155 Conn Ave,NW#1000 20037
Hillis, Jane E.	Rpt	Ross Marsh & Foster 2001 L St,NW#400 20036
Hines, Stephanie D.	New	Wilkie Farr & Gallagher 1875 K St,NW 20006
Hodgson, Joan C.	New	N A M 1331 Pa Ave,NW#600 20004
Kaidi, Said	New	Congressional F C U 2 nd & D Sts,SW 20026
Kennedy, Jay	New	Attorney at Law 3628 12 th St,NE 20017
Kwak, Steve	Rpt	South Capitol Liquor 4654 Livingston Rd,SE 20032
Laird-Hammond, John	Rpt	Franciscan Monastery 1400 Quincy St,NE 20017

Lang, Michael D.	Rpt	First Union/Wachovia Bank 801 Pa Ave,NW 20004
Lewis, Carolyn V.	Rpt	Banner & Witcoff 1001 G St,NW11thFl 20001
Lombard, Denice Z.	New	L A D Reporting 1100 Conn Ave,NW#850 20036
McClarín, Alice Faye	Rpt	Vets'Hosp/Release Info 50 Irving St,NW 20422
Mazowieski, Cynthia L.	New	Trizec 1250 Conn Ave,NW#500 20036
Morris,Jr., George H.	Rpt	Wash Postal Employees FCU 1818 N Y Ave,NE 20002
Nocho, Inez Y.	Rpt	Williams & Connolly 725 12 th St,NW 20005
O'Flaherty, Lucelle	Rpt	Wachovia Bank 5201 MacA Blvd,NW 20016
Price, Tracey R.	New	Dancil-Jones & Assoc 300 I St,NE#301 20002
Prusek, Amanda L.	New	Land Trust Alliance 1331 H St,NW#400 20005
Reams, Shana	New	Wash Hospital Ctr 110Irving St,NW#2A-38 20010
Redfearn, Yvette C.	New	Miller Reporting 735 8 th St,SE 20003
Reynolds-Palmer, Pamela	New	U P I 1510 H St,NW 20005
Rious, William D.	New	Wash Hospital Ctr 110 Irving St,NW 20010

Ross, Rita R.	Rpt	800 4 th St,SW#208S 20024
Ruggieri, Rita J.	Rpt	Troutman Sanders 401 9 th St,NW#1000 20004
Russell, Casandra	Rpt	Covington & Burling 1201 Pa Ave,NW 20004
Sanders, Kelly S.	New	Paralyzed Veterans/Amer 801 18 th St,NW 20006
Schaeffer, Jennifer	New	First Wash Insurance Co 3341 Benning Rd,NE 20019
Smith, Mary R.	Rpt	Tax Executives Inst 1200 G St,NW#300 20005
Speight, Abraham	Rpt	Small Business Admin 409 3 rd St,SW#6350 20416
Staron, Ann M.	Rpt	Willkie Farr Gallagher 1875 K St,NW 20006
Thomas, Gala	New	Wash Hospital Ctr 110 Irving St,NW 20010
Thomas, Victor A.	Rpt	U.S. Dept of Labor 200 Const Ave,NW 20210
Vance, Colleen M.	Rpt	Glover & Associates 1718 M St,NW#328 20036
Westfield, Maggie O.	Rpt	PotomacCapitalInvestment 1801 K St,NW#900 20006
Williams, JoAnn	Rpt	American Forests 910 17 th St,NW#600 20006
Zorrilla, Veronica E.	New	Buchanan Ingersoll 1776 K St,NW 20006

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 16896 of Randle Highlands Manor, LP, pursuant to 11 DCMR § 3103.2, for a variance from maximum number of stories under § 400, and a variance from the floor area ratio requirements under § 402, and pursuant to 11 DCMR § 3104.1, for a special exception to allow the construction of a community residence facility (assisted living facility for seniors and other qualified persons, 52 residents and 40 rotating staff) under § 358, in an R-5-A zone district, at premises 2700 R Street, S.E. (Square 5585, Lot 812).

HEARING DATES: July 16, 2002, October 22, 2002, January 7, 2003

DECISION DATE: January 28, 2003

DECISION AND ORDER

The applicant in this case is Randle Highlands Manor, LP, ("Randle Highlands" or "Applicant"), the owner of the property that is the subject of this application. When the Applicant acquired the property under the District of Columbia Homestead Program,¹ it was improved with an abandoned apartment building, which the Applicant subsequently razed. The Applicant then readied the site, at the corner of 27th and R Streets, S.E., for the construction for the new senior residence facility, which is planned to have room for 52 residents, and to employ a rotating staff of 40 persons.

In a memorandum dated April 29, 2002, the Office of the Zoning Administrator of the District of Columbia notified the District of Columbia Board of Zoning Adjustment ("Board") that zoning relief would be necessary for the Applicant's proposed construction. On May 1, 2002, the Applicant applied to the Board for such relief.

On July 16, 2002, the Board held a public hearing on the application. The hearing was continued until October 22, 2002, at which time certain preliminary matters were dispensed with, but no further testimony was taken. The hearing was again continued until January 7, 2003, on which date it was completed. After the hearing, the Board determined that additional information was needed from the parties and the District of Columbia Office of Planning ("OP") prior to making its decision. After receipt of such information, the Board held a public decision meeting on January 28, 2003, and, for the reasons stated below, voted 2-3-0 to deny the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated May 1, 2002, the District of Columbia Office of Zoning ("OZ") notified the City Council Member for Ward 7 and the Advisory Neighborhood Commission ("ANC") member for Single Member District 7B06 of the filing of the application. By memoranda dated May 16, 2002, OZ also notified OP and ANC 7B

¹There was some question whether the Applicant, having purchased the property through the Homestead Program, could use it for the Applicant's intended use. The Homestead Program requires the Applicant to "[s]ell each unit to a first-time homebuyer who will live in it for at least five years." See, September 10, 1998 letter from Homestead Program Administrator. This question was never resolved to the Board's satisfaction.

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of the filing of the application. Pursuant to 11 DCMR § 3113.13, the OZ published notice of the hearing on the application in the District of Columbia Register and on May 29, 2002, mailed notices to the ANC, the Applicant, and to all owners of property within 200 feet of the subject property, advising them of the date of the hearing. Further, the Applicant's affidavit of posting indicates that on June 28, 2002, it placed a zoning poster on both the 27th and R Street, S.E. street frontages of the subject property, in plain view of the public.

Requests for Party Status. The Board granted party status to the Randle Highlands Civic Association, which was represented by Ms. Geraldine Marshall. ANC 7B was automatically a party to the proceeding. There were no parties in support.

Applicant's Case. The Applicant presented testimony and evidence from Ms. Lisa Bolden, general partner for Randle Highlands, Limited Partnership, who testified that the other member of the Limited Partnership is the Anacostia Economic Development Corporation, which actually acquired the subject property through the D.C. Homestead Program. Ms. Lynn French also testified for the Applicant. Ms. French was the Homestead Program Administrator at the D.C. Department of Housing and Community Development at the time the subject property was purchased. At the time of her testimony, however, Ms. French was employed as the Senior Policy Advisor to the Deputy Mayor for Children, Youth, Families and Elders. Ms. French therefore testified both as to her knowledge of the attempts to sell the subject property, concluding with the sale to the Applicant, and as to the need for assisted living facilities in the Randle Highlands neighborhood. The Applicant also presented the testimony of Ms. Brenda Turner, the Director of Aging Services for the Greater Washington Urban League. The Applicant presented four more witnesses, Mr. O.V. Johnson, former chairperson for the D.C. State Designated Committee for the American Association of Retired Persons, Ms. Marie Harris Aldridge, a resident of the Randle Highlands neighborhood, Albert Butch Hopkins, President and CEO of Anacostia Economic Development Corporation and Ms. Magda Westerhout, the architect for the project.

Government Reports. On July 11, 2002, OP submitted a late report which was accepted by the Board and which recommended approval of the special exception and floor area ratio variance requested by the Applicant. OP, however, was uncertain whether the Applicant was requesting variance relief from § 400.1, specifically with reference to the limitation on the number of stories permitted, because the Applicant did not address this relief in its pre-hearing statement. OP therefore recommended that the Board consider whether this variance relief was necessary, but did not make a substantive recommendation. Per the Board's request, OP submitted a Supplemental Report on January 15, 2003, and concluded, to the best of its ability, which was constrained by several factors, such as confidentiality considerations, that there are no other Community Based Residential Facilities within 500 feet of the proposed structure. On January 17, however, OP submitted a memorandum to the Board stating that, after more research, it had concluded that there is one such facility within a 500-foot radius of the subject property.

ANC Report. By letter dated June 26, 2002, ANC 7B indicated that it voted at a June 15, 2002 meeting to support the application. The letter, however, does not meet the requirements of §3115.1 in that it does not specify whether a quorum was present at the meeting, nor whether proper notice of the meeting was given, nor does it contain the actual vote count.

Parties and Persons in Support. There were no parties in support, but Ms Marie Harris Aldridge, a local resident, and Mr. Ned Sloan, Counsel and Vice President of the D.C. Branch of the N.A.A.C.P., testified as persons in support. Several letters in support were received into the record, including letters from three members of the Council of the District of Columbia.

Parties and Persons in Opposition. The Randle Highlands Civic Association appeared as a party in opposition, through its representative, Ms. Geraldine Marshall. The Association is comprised of members of the Randle Highlands community. Mr. Idus Holmes, who lives in the community, testified as a person in opposition. Also, several letters and a petition in opposition were entered into the record.

Hearing. The public hearing on the application began on July 16, 2002, and continued on October 22, 2002, when the only business attended to was the granting of party status to the Randle Highlands Civic Association. The hearing was again continued to January 7, 2003, when it was completed.

Decision Meeting. At the public decision meeting on January 28, 2003, the Board voted 2-3-0 to deny the application, for the reasons stated below.

FINDINGS OF FACT

1. The subject property is located in Ward 7, in an R-5-A zone district, which permits only a low height and density, pursuant to 11 DCMR § 350.2.
2. The subject property is an almost square lot encompassing approximately 15,454 square feet. It is located at the intersection of R and 27th Streets, S.E. and bounded on a third side by a 15-foot-wide public alley.
3. The Applicant originally proposed to construct a 39-unit assisted living facility ("facility") on the subject property, but due to economic concerns, increased the number of units to 52. The facility will have a rotating staff of 40 persons, or 25 full-time equivalent positions.
4. The facility building will be 38 feet high, but will be 4 four stories tall. Its FAR will be 1.97.
5. The facility will provide 10 off-street parking spaces.
6. The facility will provide around-the-clock help with residents' daily needs, but will not provide on-site medical care, such as is provided in a nursing home, except 24-hour nursing care to residents with Alzheimer's disease.
7. 11 DCMR § 358.1 permits a facility such as this one, for up to 25 residents, as a special exception in an R-5 zone district. 11 DCMR § 358.8 permits such a facility, for more than 25 residents, as a special exception, only if certain specified conditions are met.

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8. There is one other community-based residential facility for seven or more persons within a radius of 500 feet from the subject property. There are also 4 community-based residential facilities for seven or more persons within one-half mile of the site. There are no such community-based residential facilities in the same square as the subject property.
9. The Applicant is a for-profit limited partnership, which intends to charge between \$1700.00 and \$2000.00 per month, per resident, to provide assisted living care to its 52 residents.
10. The Applicant did not claim that the facility would be operated as housing for persons with handicaps, which is a use permitted as a matter of right in this zone district, 11 DCMR § 330.5 (i).

CONCLUSIONS OF LAWThe Special Exception

Generally, the Board is authorized to grant a special exception where, in its judgment, the special exception will "be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property." 11 DCMR § 3104.1, D.C. Official Code § 6-641.07(g)(2) (2001). Each special exception permitted, however, must also meet all the conditions enumerated in the particular section pertaining to it. In this case, the Applicant had to meet not only the requirements of § 3104.2, but also the conditions listed in § 358, particularly § 358.8, of the zoning regulations.

The Applicant has failed to meet the conditions necessary to authorize the granting of the requested special exception. There is another community-based residential facility for seven or more people within a 500-foot radius of the subject property. *See*, 11 DCMR § 358.3. Section 358.7 allows the Board to overlook this fact if the Board finds that the cumulative impact of these facilities would not have an adverse impact on the neighborhood because of traffic, noise or operations. The Board, however, concludes that there will be adverse impacts to the neighborhood due to the size of the proposed facility vis-a-vis the size of the lot it is to be built on, along with the parking and traffic congestion to be generated by the operation of the facility, including deliveries, and the comings-and-goings of residents, visitors and numerous part-time staffpeople. These adverse impacts preclude the granting of the special exception not only under § 358.7, but also under § 3104.1.

The R-5-A zone district permits only a low height and density. The matter-of-right FAR permitted is .9. The FAR of the Applicant's proposed project is 1.97, more than double the matter-of-right FAR. A density of this greatly increased amount cannot be sustained on the subject property. The increased density permits the increased number of units, necessary, according to the Applicant, to make the project economical. The increased density, however, also makes for more residents, more visitors, and more staff, thereby causing more parking and traffic congestion.

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Section 358.8 specifies that a facility such as the Applicant's for more than 25 persons may only be approved if two showings are made: (1) "the program goals ... of the District of Columbia cannot be achieved by a facility of a smaller size at the subject location," and (2) "there is no other reasonable alternative to meet the program needs of that area of the District." The Applicant did not successfully make either of these showings. As to number one, the Applicant claimed that a 52-unit facility was necessary to make a profit, but not that such a large facility was necessary to meet the District's goals. Indeed, the Applicant did not show that a smaller assisted living facility or matter-of-right residential construction was infeasible on the subject property. As to number two, the Applicant made no showing as to whether or not there exists any reasonable alternative to meet the needs of the area for assisted living facilities. In fact, it is clear that a reasonable alternative does exist, in the form of a smaller facility. The Board also is unconvinced by the record that there is no other parcel of land available to the Applicant as a "reasonable alternative" site.

The Variances

The Board is authorized to grant a variance from the strict application of the zoning regulations in order to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of any zoning regulation "would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property...." D.C. Official Code § 6-641.07(g)(3), 11 DCMR § 3103.2. Relief can be granted only "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map." *Id.* An applicant for an area variance must make the lesser showing of "practical difficulties," as opposed to the more difficult showing of "undue hardship," which applies in use variance cases. *Palmer v. D. C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). The Applicant in this case, therefore, had to make three showings: uniqueness of the property, that such uniqueness results in "practical difficulties" to the applicant, and that the granting of the variance would not impair the public good or the intent and integrity of the zone plan and regulations.

The Applicant failed to show any extraordinary or exceptional situation or condition of the subject property. The property is essentially a square, encompassing approximately 15,454 square feet. It has a gentle slope, but is not narrow, shallow or oddly-shaped in any way. It fronts on two streets and is bounded on a third side by a 15-foot-wide public alley. The property is an unexceptional, unimproved corner lot.

The Applicant appears to rely on a confluence of factors to establish the uniqueness of its property. The Applicant contends that among the District's goals is the provision of services to elderly residents, that there are "no similar facilities" in the Randle Highlands area, and that it could not find another suitable parcel in the area large enough to accommodate a 52-unit facility. None of these factors, however, constitute an extraordinary or exceptional situation or condition of Applicant's property. First, the District's goals, while arguably relevant to the special exception herein, are irrelevant to the area variance tests. Second, whether or not there are other assisted living facilities in the Randle Highlands neighborhood may again be relevant to a special

exception analysis, but does not figure into an area variance analysis. Third, the Board finds that the record is inconclusive on the availability of other neighborhood tracts of land suitable for the Applicant's facility. It appears that the only exceptional situation of the property is that it is too small for the building which ensures profitability for the Applicant. While it is true that "factors extraneous to the land" itself may be considered when determining if a property has an extraordinary or exceptional situation or condition, none of the extraneous factors cited by the Applicant have even the remotest connection with the land, any legal constraints on it, any buildings on it, or its past use or zoning history, all factors which the Board may consider. *See, e.g., French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023 (D.C. 1995); *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164 (D.C. 1990); *Monaco v. District of Columbia Bd. of Zoning Adjustment*, 407 A.2d 1091 (D.C. 1979); *De Azcarate v. District of Columbia Bd. of Zoning Adjustment*, 388 A.2d 1233 (D.C. 1978); *Clerics of St. Viator v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974). Therefore, the Board concludes that the Applicant has failed to make a convincing showing of an extraordinary or exceptional situation or condition of its property.

Nor has the applicant made a convincing showing of any practical difficulties arising out of the property itself--unique or not. The only real practical difficulty encountered by the Applicant is economic. The Applicant states "[t]he economics of the assisted living facility business make it financially impossible to construct and operate an attractive facility to moderate income individuals without a minimum number of tenants," in this case, 52. (*See, Applicant's Statement in Support of the Application of the Randle Highlands Manor Limited Partnership*, at 8). Therefore, the greater height and FAR, resulting in a greater massing and density than permitted in an R-5-A zone, are not needed because of any exceptional condition of the land or even because of the internal configuration of the building, but only to make Applicant's facility profitable. There has been no credible showing that no other use can be made of the property as a matter-of-right. It may even be that a different applicant, in different financial circumstances, could build a smaller, but still profitable, assisted living facility on the site.

The salient fact is that this property is located in a residence zone district where only low height and density are permitted. The Zoning Regulations do not guarantee that every lot may be put to every allowable use. The fact that a particular lot can not accommodate a CBRF use does not make it unique or present a practical difficulty. To hold that FAR and other variance relief must be granted to the extent necessary to permit an economically viable CBRF to operate on a particular lot would result in the automatic approval of any "similar demands from neighboring property owners. Approval of such requests would in effect be amending the Zoning Regulations thereby undermining the function of the Zoning Commission whose task it is to make the basic legislative judgments in drafting regulations." *Palmer, supra*, 287 A.2d at 539.

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Board, however, finds OP's recommendations unpersuasive when weighed against the evidence in the record and the applicable legal principles. Because the ANC's June 26, 2002 letter to the Board was deficient in several respects under 11 DCMR § 3115.1, as noted earlier, the Board can not give great weight to the ANC's issues and concerns. In any event, the ANC's letter did not raise issues that would have altered the analysis made in this case.

Based on the record before the Board and for the reasons stated above, the Board concludes that the Applicant has failed to satisfy the burden of proof with respect to the application for a special exception to allow the construction of a community residence facility under §§ 3104.1 and 358 and with respect to the application for a variance from the floor area ratio requirements of § 402 and from the maximum number of stories under § 400. It is therefore **ORDERED** that the application be **DENIED**.

VOTE:**2-3-0**

(Curtis L. Etherly, Jr., and David A. Zaidain, to grant, and Geoffrey H. Griffis, Anne M. Renshaw and James H. Hannaham, to deny.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each voting Board member has approved the issuance of this Order denying the application.

FINAL DATE OF ORDER: MAR 28 2003

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT. LM/rsn

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 16966 of NEST and Totah Venture, LLC, pursuant to 11 DCMR § 3104.1, for a special exception to allow a mechanical penthouse not meeting the set-back requirements under section 411 (770.6(b)), and pursuant to 11 DCMR § 3103.2, a variance from the rear yard requirements under section 774, to allow the construction of a retail/office building with an accessory parking garage in the C-4 District at premises 1426-1430 K Street, N.W. (Square 218, Lots 808 and 823).

HEARING DATE: January 14, 2003
DECISION DATE: February 11, 2003

DECISION AND ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application is accompanied by a memorandum from the Zoning Administrator certifying the required relief.

PRELIMINARY MATTERS

1. The Board of Zoning Adjustment (the "Board"), pursuant to its rules, provided proper and timely notice of the public hearing on this Application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission ("ANC") 2F, and to the owners of property within 200 feet of the site.

2. Consistent with the Zoning Administrator's Referral Memorandum dated October 28, 2002, the Application as filed with the Board also requested approval of a variance from the maximum allowable floor area permitted pursuant to Section 771. However, upon further review, the Zoning Administrator determined that, because the proposed additional building area would be contained within a projection into public space, it does not count as FAR, and the Applicant withdrew its request for such a variance. The Zoning Administrator issued a revised Referral Memorandum to that effect dated February 3, 2003 (Exhibit 36).

3. The subject site is located within the jurisdiction of ANC 2F, which is automatically a party to this Application. ANC 2F submitted a letter in support of the Application on January 13, 2003. The Board accepted ANC 2F's report into the record by waiving its seven-day advance filing rule for such reports set forth in 11 DCMR § 3115.1.

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4. The Office of Planning (OP) submitted a timely report recommending approval of the Application, as revised, on January 7, 2003.

5. On January 7, 2003, the Board received a request for party status from Chevy Chase Bank FSB ("Chevy Chase"), owner of the property at 925-15th Street, N.W. The Board waived its 14-day advance filing requirement set forth in 11 DCMR § 3106.2, determined that Chevy Chase satisfied the criteria for party status, and granted Chevy Chase permission to participate as a party in opposition.

6. On December 4, 2002, the Board received a request for party status from Vally Spencer on behalf of the owner of the property at 901-15th Street, N.W. The Board determined that the interests of that property owner would not be more significantly, distinctively or uniquely affected by the Application than other persons in the general public and denied the request for party status.

FINDINGS OF FACT

1. The subject site is known as 1426 and 1430 K Street, N.W., Lots 808 and 823 in Square 218 (the "Site"). The lots are adjacent parcels owned by the Applicant. The Site is located on the south side of K Street, N.W., between 14th and 15th Streets. The Site is zoned C-4.

2. The Site contains 7,196 square feet of land. It is irregularly shaped, with a frontage along K Street of 80 feet and a depth of varying dimensions ranging from 93 feet on the west to 80.5 feet on the east. Unlike all other interior lots in the square, the existing 20- foot wide alley in the rear extends 12 feet into the southeast corner of the Site.

3. The Site is currently improved with two structures: (a) a 13-story office building at 1430 K Street, and (b) a 15-story concrete structure originally built as a parking garage which was later converted into a record storage facility at 1426 K Street. Both structures have been vacant for at least 10 years. The developed FAR is 10.7.

4. The Site is located between McPherson and Franklin Squares in an area characterized by high-rise office development with ground floor retail. To the east of the Site is a 6-story office/retail structure known as the Orme Building. On the west is a 12-story office structure known as the Carry Building. The 6-story Chevy Chase building

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abuts a portion of the rear of the Site. The remaining frontages of the subject square are generally developed with 10 to 12-story office/retail structures consistent with the C-4 Zone District.

5. The Applicant proposes to raze the two existing structures and construct a 12-story office building with ground floor retail. The proposed office building will be 130 feet in height and have a floor area ratio of 10.0. The project will include 36 parking spaces, one loading berth, one service delivery space, and one loading platform. Access to the parking garage and loading facilities will be via the public alley which dead ends at the rear of the site (the "Project").

6. The proposed building has been designed to relate with sensitivity to the scale and rhythm of the surrounding buildings.

7. In Case No. 15169, the Board approved a rear yard variance and roof structure special exception for the Site by Order dated May 17, 1991. The rear yard variance and roof structure setback were virtually the same as the relief requested by the Applicant in this case. That project was never built.

8. The C-4 District requires a rear yard of 2.5 inches per foot of vertical height but not less than twelve feet commencing twenty feet above the mean finished grade. The proposed structure requires a rear yard of 27.29 feet. The Applicant proposes to provide a rear yard of 16.23 feet measured from the rear property line. A variance from the rear yard provisions is therefore required.

9. The property is affected by an extraordinary or exceptional situation or condition in that the shape, shallowness and irregular depth of the Site limit the amount and configuration of useable office space that can be built on it. Moreover, the Site is the only non-corner lot in the subject square and within at least the 6 surrounding squares which lacks public alley access running the length of its rear property line. The rear yard must therefore be measured from the rear property line instead of from the middle of the adjacent alley.

10. Strict application of the minimum rear yard requirement to the Site would result in peculiar and extraordinary practical difficulties to the Applicant owner. The provision of a 27.29 foot rear yard would produce an office building with a depth of only 65 feet. Centering the necessary elevator/service core in a building of that depth would leave only 20 feet of floor area between the north and south building walls. In a multi-tenant layout, that area would be reduced by corridors in the public areas and inside the

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tenant space, leaving a depth of usable office space in the front and rear of only 10 feet. The internal configuration of office space which could be provided in a structure of those dimensions would be functionally impractical and not commercially marketable, and would force the Applicant to abandon plans to redevelop the Site because such a structure would not be economically viable, particularly in view of the atypical costs for demolition and site clearance.

11. The proposed 16.23 foot rear yard is consistent with the 12- to 19-foot rear yards provided by other structures in the square. The adjacent buildings to the east and west of the Site occupy 100 percent of their lots, and the proposed rear yard would not block sunlight for neighboring properties to the south because it would not affect sunlight penetration to the alley or the area abutting the southern property line. The proposed reduced rear yard will, therefore, not adversely impact immediate adjacent buildings in terms of reduced light and air.

12. The C-4 District provides for a maximum height of roof structures of 18.5 feet, set back from the exterior walls of the structure a distance at least equal to the height of the roof structure. The Applicant is seeking special exception approval pursuant to Subsection 411.11 to deviate from the 18.5-foot setback requirement at the rear (south) of the proposed structure.

13. The irregular shape and small in-fill nature of the Site renders full compliance with the roof structure setbacks impracticable. The proposed mechanical penthouse is 18.5 feet in height. Locating the roof structure 18.5 feet from all exterior walls in a building with such a small footprint would produce an inefficient internal layout of office space due to the need for an appropriately located service core. The proximity of the roof structure to the front of the Site would result in increased visibility from K Street. The Applicant proposes to set the roof structure back 30 feet from K Street to the north, 18.5 feet on the east and west, and 6.0 feet to the south. The Applicant has minimized the impacts of the penthouse on adjacent properties by reducing the floor area ratio of the roof structure from .37 (permitted as a matter-of-right) to .25. The location of the penthouse would preserve the sightlines from K Street, the only public street on which the site has frontage, without affecting available sunlight for adjoining properties.

14. The OP recommended approval of the rear yard variance and the special exception for the proposed roof structure setback. The OP was of the opinion that the size and shape of the site creates practical difficulties for the Applicant owner. The OP concluded that the proposed rear yard would not have a significant impact on the light

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and air available to the Chevy Chase building, and that the proposed penthouse enclosure would not have any impact. The OP was further of the opinion that the proposed project is consistent with the goals and objectives of the Comprehensive Plan for this subarea of the Downtown.

15. By memorandum dated January 3, 2003, the Fire Marshal reported to the OP that the D.C. Fire and EMS Department had no objection to the Application, provided certain actions are taken to preserve emergency access in the alley (Exhibit 28).

16. By memorandum dated January 10, 2003, the Metropolitan Police Department recommended that the Application be approved (Exhibit 34).

17. ANC 2F, by letter dated January 13, 2003, unanimously supported approval of the Application in all respects. The Commission added that it "welcomes the proposed replacement of two long-derelict vacant buildings with a new building having architectural merit" (Exhibit 32).

18. Chevy Chase opposed the Application, contending that approval of the proposed rear yard variance and roof structure special exception might reduce the light and air available to a certain portion of the space in the rear of its building, thereby potentially reducing the value of its property. However, Chevy Chase offered no evidence to quantify any reduction in the value of its property. Moreover, its witness was not able to describe the particular uses conducted within the affected interior spaces, nor could he contradict the Applicant's evidence that at least one of the windows in the building is blocked from the inside.

19. Approval of the Application will not reduce the light and air available to the Chevy Chase building. Two-thirds of the windows on the side of that 6-story building facing the Site are set back 8 feet from the property line. Most of the natural light enters the area between the Site and the Chevy Chase property from the sun traveling overhead from east to west; the Site is to the north. A building height of 130 feet is permitted as a matter of right on the Site because the width of the adjacent K Street right-of-way is greater than 110 feet. Reducing the height of the proposed building would still have the effect of moving the rear wall closer to the Chevy Chase building. The proposed penthouse would be more than 22 feet from the property line. The Applicant proposes to replace the existing garage entrance with a structure only 13 feet tall, which would be approximately 7 feet lower than the existing structure, thereby increasing the amount of light available to the lower levels of the Chevy Chase building.

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The existing situation would be further improved by the construction of a building on the Site with windows on the full south facade; there are no windows in the south wall of the existing storage building. Accordingly, the Board finds that the project proposed by the Applicant will have no adverse impact on the Chevy Chase property.

CONCLUSIONS OF LAW AND OPINION

Based upon the foregoing Findings of Fact, the Board concludes that the Applicant is seeking an area variance from Section 774 of the Zoning Regulations and a special exception under Section 411 of the Zoning Regulations.

To be entitled to an area variance under 11 DCMR § 3103.2, the Applicant must demonstrate: (a) an exceptional or extraordinary situation or condition inherent in the property which creates a practical difficulty upon the owner, and (b) that the variance can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose or integrity of the zone plan.

Therefore, based upon the record before the Board, and having given great weight to ANC 2F and to the OP, the Board concludes that the Applicant has met the burden of proof for an area variance under 11 DCMR § 3103.2. The Board further concludes that the Site is subject to extraordinary or exceptional conditions by virtue of its small size, shallowness, irregular shape, and the fact that the Site is the only non-corner lot in the subject square and within at least the 6 surrounding squares which does not have a public alley running the length of its rear property line, necessitating measurement for rear yard purposes from the rear property line instead of from the middle of the alley. This confluence of factors results in an exceptional condition or situation impacting the Site.

The Board also concludes that, by reason of the extraordinary or exceptional condition impacting the Site, strict compliance with the rear yard requirement of Section 774.1 results in a practical difficulty upon the Applicant. Compliance with the minimum rear yard requirement in this instance would yield a building depth of only 65 feet. Centering the necessary elevator/service core in such a shallow building would not leave a commercially reasonable usable amount of office space area between the core and the north or south building walls. It would not be financially feasible or prudent to build a building with such a commercially unmarketable internal configuration.

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The Board further concludes that the requested variance can be granted without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Maps. The Project is supported by ANC 2F. The proposed use, height and bulk are consistent with the C-4 District and the development of this area of the Downtown in general and of this area of K Street in particular. The Project will benefit the immediate neighborhood by replacing two distressed, long-vacant high-rise structures with a modern Class A office building that is consistent with the prevailing character of the neighborhood. The 11-foot rear yard variance will enable appropriate and economically feasible development of the Site without impairing, and even improving, the light and air available at the rear.

Based upon the record before the Board, and having given great weight to ANC 2F and to the OP, the Board concludes that the Applicant has also met the burden of proof established by 11 DCMR § 3104.1 for a special exception under subsections 411.11 and 770.6(b). The Board concludes that compliance with the requirements of subsection 770.6(b) would be impracticable because of the location, size and shape of the Site and the practical difficulties that would result from attempting to locate the mechanical penthouse further than 6 feet from the rear (south) exterior wall and that, therefore, compliance with this requirement would be unduly restrictive, prohibitively costly, and unreasonable. The roof structure has been removed from the rear building wall as much as possible consistent with the need to provide functional, commercially usable office space.

The Board also concludes that the proposed roof structure will not materially impair the intent and purpose of Chapter 400 and the Zoning Regulations, and that the light and air of adjacent buildings will not be affected adversely by it. The roof structure will have no impact on the amount of light available to the north side of the Chevy Chase building, while the Project as a whole will increase the amount of light in the alley area behind the Site. Accordingly, the Board concludes that the location of the proposed roof structure will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring properties in accordance with the Zoning Regulations and Maps. The Applicant is therefore entitled to relief from the requirements of subsection 770.6(b).

For the reasons stated above, the Board concludes that the Applicant has met the burden, and it is hereby **ORDERED** that this application, as revised, be **GRANTED**.

VOTE: **4-0-1** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Anne Mohnkern Renshaw to approve; John G. Parsons to approve by proxy; and David A. Zaidain, not hearing the case, not voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: APR - 2 2003

UNDER 11 DCMR § 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION, WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. cm

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 16986 of Loder & Gravett, LLC, pursuant to 11 DCMR § 3103.2, for a variance from the floor area ratio requirements under section 402, a variance from the lot occupancy requirements under section 403, a variance from the rear yard requirements under section 404, and a variance from the closed court requirements under section 406, to construct a 4 unit apartment house in the R-5-B District at premises 2131 – 2133 10th Street, N.W. (Square 358, Lots 58 and 59).

HEARING DATE: March 11, 2003

DECISION DATE: April 1, 2003

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 1B, the Office of Planning (OP) and to owners of property within 200 feet of the site. The site of the application is located within the jurisdiction of ANC 1B. ANC 1B submitted a letter in support of the application. The OP submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance pursuant to 11 DCMR § 3103.2. No person or entity appearing as a party to this case testified in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 402, 403, 404 and 406, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. It is therefore **ORDERED** that this application be **GRANTED**.

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Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is not prohibited by law.

VOTE: **3-0-2** (Carol J. Mitten, Curtis L. Etherly, Jr., and
Geoffrey H. Griffis to grant, David A. Zaidain,
and the third mayoral appointee not present, not
voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring Board member has approved the issuance of this order.

FINAL DATE OF ORDER: APR - 2 2003

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE

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TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 16992 of David P. and Jana Frankel, pursuant to 11 DCMR § 3104.1 for a special exception to allow an accessory apartment within an existing detached single family dwelling under subsection 202.10, in the R-2 District at premises 4336 Garrison Street, N.W. (Square 1655, Lot 16).

HEARING DATE: March 18, 2003
DECISION DATE: March 18, 2003 (Bench Decision)

DECISION AND ORDER

On January 15, 2003, David P. and Jana Frankel filed an application with the Board of Zoning Adjustment (BZA) seeking a special exception in order to alter approximately 570 square feet of existing basement storage space in their residence for use as an accessory apartment. The Applicants stated that they intended to construct an accessory apartment in this space and rent it to one or two people.

The BZA, at its March 18, 2003 public hearing, after discussion and deliberation on the application approved the application by a vote of 4-0-1.

PRELIMINARY MATTERS:

BZA Chairman Geoffrey H. Griffis announced that in reviewing the file in this case, he noticed that Paul Davey was identified as the Applicants' architect. Chairman Griffis stated that Paul Davey is someone he knows, has worked with in the past, and is presently working with on an unrelated project. Chairman Griffis stated that he had not discussed this case with Mr. Davey and felt he could proceed to review and decide on this matter impartially. Chairman Griffis added that he would recuse himself if anyone objected. Upon request, neither the Applicants nor those seeking party status (Daphne and Andrew Trotter) objected to Chairman Griffis' participation in this case. The BZA voted unanimously (but with Chairman Griffis abstaining) to proceed on this case with Chairman Griffis' full participation.

Notice of Application and Notice of Hearing. By memorandum dated January 15, 2003, the Office of Zoning provided notice of filing of the application to the District of Columbia Office of Planning, the affected Advisory Neighborhood Commission (ANC 3E) and Single Member District Commissioner, and the Ward 3 Council Member. Exhibit No. 15.

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The BZA scheduled a hearing on the application for March 18, 2003. Pursuant to 11 DCMR § 3113.13, the Office of Zoning, on January 23, 2003, mailed the Applicants, the owners of all property within 200 feet of the subject property, and ANC 3E notice of hearing. Exhibit Nos. 22-23. Notice of hearing was also published in the D.C. Register. The Applicants filed an Affidavit of Posting, which indicates that the property was posted properly. Exhibit No. 35.

Request for Party Status. Daphne and Andrew Trotter (the "Trotters"), the owners of a property at 5015 44th Street, N.W., that shares a common border with the Applicants, each separately requested party status. Exhibit Nos. 32 and 33. The Trotters requested that the BZA deny the application. The BZA asked whether the Trotters were related and living at the same address, and if so, whether these two requests for party status could be consolidated into one request. The Trotters answered that they are related and living at the same address and therefore agreed to the consolidation of their requests for party status. The Applicants had no objection to either the consolidation or to the granting of the request for party status. The BZA voted unanimously to grant the request for party status to the Trotters.

Persons in Support of the Application. The Applicants submitted four letters in support of their application from neighbors living within 200 feet of their property and one e-mail message stating no objection to the application but praising the Applicants' investment in the neighborhood. Exhibit Nos. 9-10 and 25-30. The four letters in support were from: (1) Ida Kunz of 4340 Garrison Street, N.W., the owner of the adjacent property immediately to the west of the Applicants' property; (2) Thomas E. Eichler of 4328 Garrison Street, N.W. (also writing on behalf of his wife, Wendy Eichler), the owners of the adjacent property immediately to the east of the Applicants' property; (3) Todd D. Boley, the owner of the property at 4324 Garrison Street, N.W.; and (4) David Epstein, the owner of the property at 4320 Garrison Street, N.W. The e-mail message was from Janet Bachman, the owner of the property at 5012 44th Street, N.W.

Persons in Opposition to the Application. No other person other than the Trotters expressed opposition to the application.

Self-Certified Application. The Applicants filed a Self-Certified BZA Application, Exhibit No. 6, seeking a special exception pursuant to 11 DCMR § 3104.1 pursuant to 11 DCMR § 202.10.

Authorization. David P. Frankel, Esquire, an attorney and a member of the District of Columbia Bar and one of the Applicants represented the Applicants at the public hearing. Jana Frankel, one of the two Applicants, was also in

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attendance at the hearing, as was the Applicants' D.C. licensed architect, Paul Davey.

DC Office of Planning (OP) Report. OP filed a report recommending approval of the application. Exhibit No. 36. The report was received in the Office of Zoning on March 11, 2003. OP's rationale for recommending approval of the application was: (1) the proposed accessory apartment satisfied Section 202.10(a) because the area of the subject property is 6,142 square feet, which is in excess of the minimum requirement of 4,000 square feet for an accessory apartment in the R-2 district; (2) the proposed accessory apartment satisfied Section 202.10(b) because the house consists of 3,768 square feet exclusive of the garage, which is in excess of the minimum requirement of 2,000 square feet; (3) the proposed accessory apartment satisfied Section 202.10(c) because the Applicants have indicated that the accessory apartment is approximately 600 square feet in area, which is 15.9 percent of the gross floor area, which is less than the maximum 25 percent permitted; (4) the proposed accessory apartment satisfied Section 202.10(d) because it is being created in an area that is identified on the "Existing Lower Level Floor Plan" submitted by the Applicants as either "storage," or "bike storage" or "bike workshop." No additional lot occupancy or gross floor area is necessary, and this proposal does not include the conversion of any garage space; (5) the proposed accessory apartment satisfied Section 202.10(e) because no additional entrance to the house is proposed and access to the proposed accessory apartment is through an existing external doorway, on the west side of the dwelling; (6) the proposed accessory apartment satisfied Section 202.10(f) because the owners of the property will occupy the principal dwelling; (7) the proposed accessory apartment satisfied Section 202.10(g) because the total number of persons occupying the house will not be more than six, as the maximum number of occupants within the principal dwelling is three and the maximum number of occupants within the proposed accessory apartment is two, for a total of five; and (8) the proposed accessory apartment satisfied Section 202.10(h) because the Applicants do not and will not have a home occupation located on the premises. OP concluded that the Applicants satisfactorily met the criteria for special exception relief pursuant to 11 DCMR § 202.10, and that in granting the relief, the intent and purpose of the chapter "shall not adversely affect the use of the neighboring properties." OP also concluded that this proposed accessory apartment will contribute towards the Ward 3 general policy of creating housing opportunities for housing near the ward's Metrorail stations. Finally, while OP recommended granting the application as submitted by the Applicants, it also suggested "that if the Applicants install any external lighting for the proposed accessory apartment entrance, that such lighting be shielded and directed downward so as to not cast light into any window or door of the adjacent house to the west."

Advisory Neighborhood Commission (ANC) Report. By correspondence dated February 28, 2003 (Exhibit No. 34), ANC 3E recommended approval of the application "with the caveat that within six months of completion the applicant design and provide for adequate screening and lighting for the accessory apartment." Further, ANC 3E recommended that the Trotters be given party status with the right to appeal to the BZA six months after the completion of the project has expired. ANC 3E's report indicated that the vote on this recommendation was 5-0. ANC 3E's report indicated that it was informed that on January 13, 2003, the Applicants notified all property owners living within 200 feet of the Applicants' property of the ANC meeting which was scheduled for and held on February 13, 2003. ANC 3E itself also informed the community of this matter by publishing its agenda in the Northwest Current, on ANC 3E's official Internet web site, and by posting its proposed agenda around the community.

A letter dated March 12, 2003 from Single Member Commissioner Amy Bauer McVey (ANC 3E01) was waived into the record by the BZA (Exhibit No. 38). Commissioner McVey wrote that the caveat contained in the report submitted by ANC 3E was not the caveat she recalled approving at ANC 3E's February 13, 2003 meeting. She stated that she approved a caveat that read: "with the caveat that within six months of completion the applicant design screening and lighting for the accessory apartment."

Closing of the Record. Upon hearing the Applicants' case, reviewing the recommendations of the Office of Planning and Advisory Neighborhood Commission 3E and the Trotters' opposition, the BZA closed the record and did not request any additional information.

Decision. The BZA approved the special exception request without any caveats, qualifications or restrictions at the conclusion of the public hearing.

SUMMARY OF EVIDENCE

The Applicants' Proposal

The Applicants' proposal would allow the conversion of approximately 570 square feet of existing basement storage space into an accessory apartment that could be rented to one or two persons. This proposed accessory apartment would be located in part of the recently-constructed addition to the rear of the Applicants' detached, single family dwelling. The Applicants' 54 year old house has been undergoing extensive renovations since October 2002 pursuant to DCRA Building Permit Number B445928. The entranceway, floor, exterior walls, door and windows are part of the permitted addition and have already been constructed and

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installed so the work to convert part of the basement of the addition into an accessory apartment will consist of internal conversion only.

The entrance door to the proposed accessory apartment faces west towards the property at 4340 Garrison Street, N.W. and does not face the street. The proposed accessory apartment will have a separate bedroom with an existing window facing the adjoining property to the east and a separate walk-in closet, a fully-equipped kitchen, a full bath, a washer/dryer combination, a living area with a window and an entrance door, recessed lights, two high speed internet connections, a centrally-monitored security system, including heat and smoke detectors and two cable/ satellite television connections.

Because the subject property is located in the R-2 District, a special exception is required for the placement there of this proposed accessory apartment. Under the requirement of Section 202.10 of the Zoning Regulations, accessory apartments may be placed in single-family dwellings, if the criteria contained in the Regulations are met. The Applicants, therefore, sought approval to convert part of their existing basement space into an accessory apartment under the special exception provision of Section 202.10. The Applicants stated that their proposal met each of the eight specific requirements contained in Section 202.10, and even if were found that one or two of the requirements were not met, the Applicants stated that their request for a special exception should be granted because the BZA may waive up to two of the requirements under certain circumstances applicable here. See 11 DCMR § 202.10(i).

The Subject Property and the Surrounding Area

The site is located in the Friendship Heights neighborhood of Ward 3. It is also located in Square 1655, on Lot 16, at premises 4336 Garrison Street, N.W. The boundaries of the subject square are Wisconsin Avenue to the east, 44th Street to the west, Garrison Street to the north and Fessenden Street to the south. The neighborhood is residential and commercial in character, consisting primarily of brick colonial and wood frame structures and commercial buildings. Across Garrison Street from the site is the undeveloped portion of a lot that is within the R-2 District. The remainder of that lot is developed with a surface parking lot within the R-2 District and an office building with ground floor retail that fronts on Wisconsin Avenue within the C-2-A District. Wisconsin Avenue, located approximately one-half block to the east, is developed primarily with low and mid-rise buildings occupied by commercial and retail uses within the C-2-A District. Approximately two and one-half blocks to the north is an entrance to the Friendship Heights Metro station (red line).

There is no alley access to the subject property. The only access to the rear of the subject property is through the dwelling or via the east and west side yards. The east side yard is six feet wide from the house to the property line and access through the side yard is limited because of mature trees in the front, the placement on the ground of air conditioning condenser units from the subject property and the neighboring property at 4328 Garrison Street, N.W., and the window well related to the subject property. The west side yard of the subject property is eight feet wide from the house to the property line and access through the side yard is limited because of the cement retaining wall separating the earth from the eight cement steps leading to the basement area. The outermost edge of this retaining wall is approximately four feet from the west property line of the subject property.

The rectangular shaped site contains 6,142 square feet of land area. It has a width of 50 feet and a depth of 122.83 feet. It is improved with a two-story single-family detached dwelling that was constructed in 1949. The house is undergoing renovations and an addition has been added as part of these renovations. The dwelling unit contains two stories plus a basement and a walk up attic. There is also a garage attached to the house and a driveway leading to the garage.

Zoning

The subject property is zoned R-2. The R-2 District consists of those areas that have been developed with one-family, semi-detached dwellings, and is designed to protect them from invasion by denser types of residential development. No variance relief is being sought for the area requirements of the R-2 District.

The Applicants are proposing to place an accessory apartment, consisting of approximately 570 square feet, in a portion of the existing basement area of their property. The Applicants and their architect, Paul Davey, testified that each of the eight criteria set forth in 11 DCMR § 202.10 have been met in this case.

First, they stated that because the Applicants' lot size is 6,142 square feet, they exceed the minimum required lot size of 4,000 by more than 50 percent. *See id.* § 202.10(a).

Second, the Applicants and their architect testified at the hearing that the total square footage of gross floor area, exclusive of garage space, is approximately 4,586 square feet. Of this, they testified that approximately 2,366 square feet existed prior to the construction of their recent addition. Thus, the Applicants stated that their house contains more than the required 2,000 square feet of gross floor area required by the zoning regulations for accessory apartments. *See id.* § 202.10(b).

Third, the Applicants and their architect testified that with a proposed accessory apartment consisting of approximately 570 square feet, this will constitute less than 15 percent of the gross floor area of the house. The Applicants further testified that even if no addition had been placed on the house, the proposed accessory apartment would have occupied only 24 percent of the gross floor area of the pre-addition house (i.e., 2,366 square feet), excluding the garage. Using either calculation, the Applicants testified that their proposed accessory apartment will occupy no more than 25 percent of the gross floor area of their house. *See id.* 202.10(c).

Fourth, the Applicants and their architect testified that their proposed accessory apartment will be created only through internal conversion of the house, without any additional lot occupancy or gross floor area and that garage space will not be converted. *See id.* 202.10(d).

Fifth, the Applicants and their architect testified that no additional entrance to their house will be created, that the below grade entrance to the proposed accessory apartment already exists and that this entrance faces west towards the adjacent property located at 4340 Garrison Street, N.W. and does not face the street. *See id.* 202.10(e).

Sixth, the Applicants and their architect testified that they plan on occupying the principal dwelling and renting the proposed accessory apartment one or two tenants. *See id.* 202.10(f).

Seventh, the Applicants testified that their family consists of three people and that they plan on renting their proposed accessory apartment to one or two tenants. Even if there are two tenants, this would mean that the combination of the principal dwelling and the proposed accessory apartment together would yield five persons, one less than zoning limit of six persons. *See id.* 202.10(g).

Eighth, the Applicants and their architect testified that they have never had a home occupation on the premises and they have no plans to ever do so. *See id.* 202.10(h).

Finally, the Applicants and their architect testified that if the BZA were to find that they did not meet any of the above-listed criteria, the BZA should modify or waive up to two of the requirements pursuant to 11 DCMR § 202.10(i). The Applicants have not requested a waiver of the owner-occupancy requirement and they and their architect testified that any modifications of the remaining requirements will not conflict with the concept of maintaining the single-family residential appearance and character in the R-2 District.

Opposition

The only opposition to the application was submitted and presented by Daphne and Andrew Trotter. The Trotters live at 5015 44th Street, N.W. and their entire rear property line (their easternmost property line) is contiguous with part of the side portion of the Applicants' southwesternmost property line. The Trotters expressed concern that the proposed accessory apartment would expose them to the activity of tenants, their comings and goings through the existing basement entrance, window lighting, and exterior lighting over the basement entrance, intrude on their privacy and affect the value of their property.

The Trotters also presented two related legal challenges to the application. First, they contended that the proposed accessory apartment is part of a new lot occupancy or new gross floor area because it is contained entirely within the newly-constructed addition that has been placed onto the rear of the Applicants' property pursuant to a building permit that was issued in May 2002. This, they asserted, is in violation of 11 DCMR § 202.10(d).

Second, the Trotters argued at the hearing that part of the entrance door to the proposed accessory apartment is visible from 44th Street, N.W. and that this violates 11 DCMR § 202.10(e).

FINDINGS OF FACT

1. The subject property is zoned R-2. No variance relief is being sought for the area requirements of the R-2 District.
2. The subject lot size is 6,142 square feet, which exceeds the minimum required lot size of 4,000 by more than 50 percent.
3. The total square footage of gross floor area, exclusive of garage space, of the subject dwelling is approximately 4,586 square feet. Of this, approximately 2,366 square feet (exclusive of garage space) existed prior to the construction of the recent addition to the subject dwelling. Thus, the subject dwelling, both pre- and post-addition, contains more than the required 2,000 square feet of gross floor area required by the zoning regulations for accessory apartments.

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4. With a proposed accessory apartment consisting of approximately 570 square feet, this will constitute less than 15 percent of the gross floor area of the subject dwelling. Even if no addition had been placed on the subject dwelling, the proposed accessory apartment would have occupied only 24 percent of the gross floor area of the pre-addition house (*i.e.*, 570 square feet of 2,366 square feet), excluding the garage. Using either calculation, the proposed accessory apartment will occupy no more than 25 percent of the gross floor area of the subject dwelling.

5. The proposed accessory apartment will be created only through internal conversion of the house, without any additional lot occupancy or gross floor area and garage space will not be converted. The entranceway, floor, exterior walls, door and windows for this entire basement area have already been constructed and installed pursuant to DCRA building permit number B445928. The basement area of the already permitted addition, where this proposed accessory apartment will be placed, will continue to exist (albeit not as an accessory apartment) if the BZA denies the application for an accessory apartment.

6. The below-grade entrance to the proposed accessory apartment already exists and no additional entrance to the subject property will be created. This entrance faces west towards the adjacent property located at 4340 Garrison Street, N.W. While the top portion of the entrance may be partially visible from 44th Street, N.W., the entrance faces the adjacent property at 4340 Garrison Street, N.W. and does not face Garrison, 44th or any other streets.

7. The subject property will be owner-occupied. The Applicants testified that they plan on occupying the principal dwelling and renting the proposed accessory apartment to one or two tenants. This testimony was undisputed.

8. The Applicants' family consists of three people and they plan on renting their proposed accessory apartment to one or two tenants. Even if there are two tenants, this would mean that the combination of the principal dwelling and the proposed accessory apartment together would total five persons, one less than the zoning limit of six persons.

9. The Applicants have never had a home occupation on the premises and they testified that they have no plans to ever do so. This testimony was undisputed.

10. The availability of parking for motor vehicles along the portion of Garrison Street, N.W. in the vicinity of the subject property is generally not a problem because each house on the 4300 block of Garrison Street, N.W. has a garage and a driveway and because most of the north side of this portion of Garrison Street, N.W. consists of an undeveloped lot within the R-2 District. In addition, there are

two surface parking lots behind the commercial buildings that line the northwest and southwest sides of Wisconsin Avenue, N.W. at the intersection of Garrison Street, N.W. that help minimize parking problems on this block of Garrison Street, N.W. during business hours.

11. There is no alley access to the subject property. The only possible access to the rear yard of the subject property is via the east side yard, the west side yard and the dwelling.

12. The eastern side yard of the subject property is six feet wide. The northeast part of the side yard has mature trees and shrubs that restrict access to this side yard. In addition, both the subject property and the adjacent property at 4328 Garrison Street, N.W. use this side yard for the placement of air conditioner condenser units on the ground, as well as gas, electric and telephone utility connections. Finally, the subject property contains a deep window well in its east side yard that further restricts access along this side yard. These factors in combination severely restrict the Applicants' ability to gain access to their rear yard via their east side yard.

13. The western side yard of the subject property is eight feet wide. There are eight cement steps leading to the below-grade basement entrance along the west side yard of the subject property. These steps are separated from the surrounding earth by a cement retaining wall. The distance from the outermost edge of the retaining wall to the west side property line of the subject property is approximately four feet, leaving approximately four feet for access to the rear yard of the subject property for such items as a lawnmower or a large trash container.

14. The two property owners who are most affected by the proposed accessory apartment – the property owners at 4340 Garrison Street, N.W. (Mrs. Ida Kunz) and at 4328 Garrison Street, N.W. (Thomas and Wendy Eichler) – support the application. Mrs. Kunz' property is eight feet from the existing below-grade basement entrance and her dwelling is approximately sixteen feet from that entrance. Mrs. Kunz' rear screened-in porch, dining room and master bedroom overlook the existing below-grade basement entrance. The Eichlers' property is six feet from the existing below-grade window and their dwelling is approximately 12 feet from that window. The Eichlers' kitchen overlooks the existing below-grade basement window. Two other property owners on Garrison Street, N.W. support the application and one property owner on 44th Street, N.W. has expressed her support for the Applicants' investment in the neighborhood. Each of these letters and the e-mail message were submitted from owners of property within 200 feet of the subject property.

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15. The already-constructed and permitted below-grade entrance to the subject property's proposed accessory apartment is approximately 80 feet from the rear entrance of the Trotters' dwelling and about 15 feet from the Trotters' rear property line.

16. The Trotters have offered no evidence, such as the testimony of a licensed appraiser, to support their contention that this proposed accessory apartment will diminish the value of their property, and if so, by how much.

17. The BZA considered the position of Advisory Neighborhood Commission 3E, which recommended approval of the application "with the caveat that within six months of completion the applicant design and provide for adequate screening and lighting for the accessory apartment." Further, the BZA considered the recommendation of ANC 3E that the Trotters be given party status with the right to appeal to the BZA six months after the completion of the project has expired.

18. The BZA reviewed the recommendation of the Office of Planning that the BZA grant the application as submitted by the Applicants. The BZA also considered the suggestion of the Office of Planning "that if the Applicants install any external lighting for the proposed accessory apartment entrance, that such lighting be shielded and directed downward so as to not cast light into any window or door of the adjacent house to the west."

CONCLUSIONS OF LAW AND OPINION

The BZA is authorized under § 8 of the Zoning Act, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Code §§ 6-641.07(g)(2) and (3) (2002)), to grant special exceptions from the Zoning Regulations. The Applicants are seeking a special exception pursuant to § 3104.1 and under 202.10 to allow an accessory apartment within an existing detached single family dwelling in the R-2 District. The notice requirements of § 3113 for the public hearing on the application have been met.

The Applicants were required to demonstrate that the proposed accessory apartment would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and would not tend to affect adversely, the use of neighboring properties in accordance with the Zoning Regulations and Zoning Maps. Based upon the findings of fact, the BZA concludes that the application does meet the requirements for approval of the accessory apartment.

The BZA gave "great weight" to the recommendation of the Office of Planning and agrees with OP that upon due consideration to the subject property's zoning, the intensity of use, the character of the neighborhood and the standards

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for special exception, the proposed accessory apartment meets the required tests and can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. At the same time, the BZA determined not to make as a condition of approval the OP's suggestion that if the applicants install any external lighting for the accessory apartment entrance, that such lighting be shielded and directed downward so as not to cast light into any window or door of the adjacent house to the west. The BZA determined that issues related to lighting raise safety and security issues that are best addressed in the building code compliance process. Because the rear entrance to the Trotters' dwelling is approximately 80 feet from the entrance and one window to the proposed accessory apartment, it is unlikely that lights from the proposed accessory apartment area of the subject property will substantially impair the use and enjoyment of the Trotters' property.

The BZA is of the opinion that § 202.10 of the Zoning Regulations was developed to maintain and expand the existing housing stock and to ensure a greater variety of housing types, opportunities and choices. This is especially relevant in areas, such as the subject property, which are close to Metrorail and Metrobus lines, as well as commercial and retail development. The BZA is of the opinion that the Applicants meet and satisfy each of the requirements of § 202.10.

In reviewing BZA cases, the BZA is required under D.C. Code § 1-309(d) (2002) to give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. The BZA has carefully considered ANC 3E's report and agrees with that ANC's recommendation to approve the application. At the same time, the BZA has determined not to accept the ANC 3E's caveat that within six months of completion the Applicants design and provide for adequate screening and lighting for the accessory apartment. As stated in response to the Office of Planning's suggestion with respect to external lighting, lighting is an issue of safety and security and is best addressed in the building code compliance process, especially here, where there are eight cement steps leading to this below-grade entrance that need to be illuminated. In addition, any efforts to implement screening along the west side yard of the subject property must take into account the existing cement steps and retaining wall which greatly restrict the area available for installing screening. Thus, this screening issue is best left to the Applicants to discuss with their adjoining neighbor to the west at 4340 Garrison Street, N.W., who has written in support of the application and who is clearly most affected by the proposed accessory apartment.

ANC 3E also recommended that the Trotters be given party status with the right to appeal to the BZA six months after the completion of the project has expired. The BZA granted party status to the Trotters but determined not to

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permit the Trotters to appeal to the BZA six months after the completion of the project. Because the BZA has decided to deny the underlying premise for such an appeal (*i.e.*, the BZA decided not to add a caveat to the effect that within six months of completion the Applicants design and provide for adequate screening and lighting for the accessory apartment) there is no need to permit the appeal to the BZA that ANC 3E has proposed.

Based on the findings of fact and having given great weight to the ANC and OP reports, the BZA concludes that the special exception will not materially impair the intent and purpose of the Zoning Regulations, adversely affect the light and air of adjacent buildings or significantly increase traffic, noise or nighttime lighting. The BZA concludes that the requested special exception relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and will not affect adversely the use of neighboring properties.

For the reasons stated above, the BZA concludes that the Applicants have met their burden of proof. It is hereby **ORDERED** that the application is **GRANTED**.

VOTE: 4-0-1 (Geoffrey H. Griffis, Anne Mohnkern Renshaw, Curtis L. Etherly, Jr. and Anthony Hood to approve, and David A. Zaidain not present).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: APR - 2 2003

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE

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D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 16993 of Ernest Peterson, pursuant to 11 DCMR § 3104.1, for a special exception to allow an addition to a single-family dwelling under section 223, not meeting the lot occupancy requirements (section 403), side yard requirements (section 405), and nonconforming structure provisions (subsection 2001.3), in the R-4 District at premises 500 P Street, N.W. (Square 479, Lot 802).

HEARING DATE: April 8, 2003
DECISION DATE: April 8, 2003 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 2C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2C, which is automatically a party to this application. ANC 2C did not participate in this application. The Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under § 223. No persons or entities appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, as set forth in the provisions and conditions below, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, that the requested relief can be granted, subject to the conditions set forth below, as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED**.

VOTE: **4-0-1** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., David A. Zaidain and James H. Hannaham to approve. The third mayoral appointee not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: APR - 9 2003

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE

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TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 16999 of U.S. Property Development Corporation, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 772, a variance from the residential recreation space requirements under section 773, a variance from the court requirements under section 776, to allow the construction of a six-story apartment building with ground floor retail space in the Arts/C-3-A District at premises 1401 and 1413 P Street, N.W., 1502 and 1506 14th Street, N.W., 1510 – 1520 14th Street, N.W., and 1410 Church Street, N.W. (Square 209, Lots 1, (800 and 802), part of 2 (803), 36 (800), 34, 35 & 57-59 (916), 37 (837) and a portion of a public alley closed by Act 14-608.

HEARING DATE: March 25, 2003

DECISION DATE: March 25, 2003 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 2F, the Office of Planning (OP) and to owners of property within 200 feet of the site. The site of the application is located within the jurisdiction of ANC 2F. ANC 2F submitted a letter in support of the application. The OP submitted a report in support of the application.

The Applicant shall have the following design flexibility provided that the flexibility sought does not create the need for additional variance and or special exception relief, and does not substantially alter the nature of what was reviewed and approved by this Order: The applicant may (a) make any revisions required by the Historic Preservation Review Board or the Historic Preservation Division, Office of Planning and (b) increase or decrease the size of the balconies in the courts provided, however, that the maximum projection of any balcony into a court shall not be greater than six (6) feet.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance pursuant to 11 DCMR §§ 3103.2. No person or entity appearing as a

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party to this case testified in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and Office of Planning reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 772, 773, and 776, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. It is therefore **ORDERED** that this application be **GRANTED**.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is not prohibited by law.

VOTE: 4-0-1 (Geoffrey H. Griffis, Anne M. Renshaw,
David A. Zaidain, Curtis L. Etherly, Jr. to grant
John G. Parsons abstaining).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring Board member has approved the issuance of this order.

FINAL DATE OF ORDER: APR - 9 2003

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE

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D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 17003 of Edward Robinson, pursuant to 11 DCMR § 3104.1, for a special exception to allow an addition to a single-family dwelling under section 223, not meeting the side yard requirements (section 405), in the R-4 District at premises 1420 A Street, S.E. (Square 1058, Lot 801).

HEARING DATE: April 8, 2003
DECISION DATE: April 8, 2003 (Bench Decision)

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum from the Zoning Administrator certifying the required relief.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 6B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. ANC 6B submitted a letter in support of the application. The Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under § 223. No persons or entities appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, as set forth in the provisions and conditions below, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, that the requested relief can be granted, subject to the conditions set forth below, as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the

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requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED**.

VOTE: **4-0-1** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., David A. Zaidain and James H. Hannaham to approve. The third mayoral appointee not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: ~~APR~~ - 9 2003

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY

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SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED,
REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF
OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

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